



Everett Waller

Chairman, 3rd OMC

# Osage Minerals Council

## Osage Headright Holder News

### OSAGE MINERALS COUNCIL SUES DEPARTMENT OF THE INTERIOR TO STOP THE APPLICATION OF THE BIA'S RULE REGULATING THE LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING

#### Special points of interest:

- OMC Sues DOI
- It's Not About Ethics

The Osage Minerals Council ("OMC") has filed a lawsuit challenging federal regulations that are contrary to the interests of headright owners and that will cause irreversible damage to the Osage Mineral Estate. The OMC, represented by Fredericks Peebles & Morgan LLP, is challenging the Final Rule regulating the leasing of Osage Reservation Lands for Oil and Gas Mining (the "Final Rule").

It is the opinion of the OMC that the Department of the Interior, United States Bureau of Indian Affairs, Secretary Sally Jewell and Director of Indian Affairs Michael Black (collectively referenced to as "BIA") violated statutory mandates for the development and

management of the Osage Mineral Estate, and exceeded its statutory authority and rendered the Final Rule not in accordance with law. The Final Rule is to go into effect on July 10, 2015. As a result of its implementation, the OMC will suffer an immediate loss of its authority over the management of its mineral estate. The Final Rule will have substantial impacts on producers due to high compliance costs, increased fees, and unwieldy standards. The costs of compliance combined with uncertainty related to the current ban on new drilling and workovers could cause producers to stop production activity in Osage mineral lands. The Final Rule does not protect the interests of the Osage Mineral Estate. In fact, producers are plugging and abandoning their

wells, rather than attempting to comply and continue to drill. Although the OMC has attempted to have the Final Rule modified so as to comport with law and to consider alleviating some of the costs associated with compliance issues resulting from the Final Rule, the OMC's efforts have fallen on deaf ears. The BIA has chosen to protect the Department of Interior from damage claims rather than act as a prudent trustee in the regulation of the Osage Mineral Estate.

The BIA had assured the OMC that they would work diligently with producers to get them prepared and educated for the new requirements, provide computers and space in the Osage Agency for producers to help them comply with the requirements, and bring BLM petroleum engineers

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## Osage Minerals Council

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to Osage to train BIA compliance officers. However, the BIA's assurances have not come close to being fulfilled. The BIA already struggles to meet its current workload of leasing, environmental analysis, permitting, inspecting, and accounting for the Osage Mineral Estate. The BIA is not prepared to implement the new regulations, nor does it have the resources or the expertise to do so. It is the OMC's position that the Final Rule should become effective only after the BIA as trustee can assure the OMC, the headright holders and producers that the Final Rule is necessary to protect the environment, develop the Mineral Estate in a prudent manner and will assure the development of the mineral estate in the best interest of the headright holders and obtain the full development of all of the oil and gas and other miner-

als of the mineral estate. The BIA has not shown that the Final Rule is economically viable given the fact that the Osage Mineral Estate is a mature asset that has been producing oil for more than a century.

The BIA's Final Rule will no doubt harm the continued development of the oil and gas production from the Osage Mineral Estate. The impact on production of oil and gas will result in less royalty, less taxes and less working interest revenue for the headright holders, the state of Oklahoma and the regional economy. Some of the economic hardships the Final Rule will cause are readily apparent. The Final Rule fails to consider the production status and the up-front costs imposed on producers. The increase in fees will be prohibitive for oil producers. The BIA approach will result in less reve-

nues generated by OMC managed minerals due to producers going elsewhere for development opportunities. Consequently, the OMC implores the BIA to reassess the Final Rule in light of the economic hardships that the new rule will impose on the mineral owners and the mineral producers. The BIA has shown no compelling interest to have the new rule put in place in the hasty manner it has done so to date. The Final Rule will collectively harm the Osage headright owners and the Osage Nation through a significant loss of income. Additionally, the Final Rule substantially increases the amount of information the BIA must process and approve for each well, so the length of time it will take to obtain approval on a permit or notice of intent will increase. The required increase of time to obtain approval on a permit or



## Lawsuit (continued from page 2)

notice will lead to a delay of any mineral production on Osage mineral leases. The increased costs will likely result in operators choosing to drill on state or private land rather than on Osage mineral lands. The OMC has the authority to lease and give royalty incentives to attract business; however, the Final Rule takes this right away from the OMC and vests it with the Superintendent, all of which is contrary to federal law. The Final Rule's intrusion on this authority will lead to irreparable harm to the OMC. The BIA must take a step back and do an economic analysis that will show the economic benefits of the new rule and develop a regulatory rationale for some of the onerous provisions on producers contained in the new rule.

The BIA has not identified a single example of environmental harm that will be prevented if the regulations are not immediately implemented. The existing federal regulatory scheme has created a safe and environmentally responsible oil and gas economy that has served the Osage headright holders well and has proven to

be effective for more than a century. The Final Rule will cause substantial and irreparable economic harm to the headright holders, the producers and the state and regional economies conversely the Final Rule will provide no compelling environmental benefit and will destroy the oil and gas economy of the Osage Mineral Estate. It behooves the BIA to heed these economic impacts that will result from the Final Rule and shows no environmental benefit over and above the existing rules. The BIA must act as a prudent trustee and develop a Final Rule that enhances the economic viability of the Osage Mineral Estate, not destroy it.

### Its Not About Ethics

On November 25, 2014, the Osage Minerals council received an inter-department delivery envelope from the Osage Nation Attorney General. The contents were a

letter dated November 26, 2014, from the Osage Attorney General and a form called "Filing of Attorney General Affidavit" and an Osage Nation Minerals Council affidavit that referenced the Osage Nation Ethics Law, 15ONC 6-203 referring to gifts. (All gifts and donors to be listed on separate page). This Osage Nation law states that on or before October 1 of each fiscal year...each elected and appointed Osage Nation official shall... We were encouraged to file as soon as possible as the 2014 fiscal year deadline had passed.

One hour before our Osage Minerals Council meeting was to begin on January 20, 2015, an Osage Nation police officer served 7 of us with a summons: Osage Nation, Plaintiff vs. (individual council members name), duly elected Minerals Council member Defendant.

The plaintiff's cause of action is styled an "Ethics Complaint". It was widely reported in local media outlets as

an "ethics complaint." In reality, however, Plaintiff's cause of action, IS NOT AND NEVER WAS AN ETHICS COMPLAINT AGAINST THE DEFENDENTS. The complaint clearly states that Plaintiff is "SEEKING DECLARATORY RELIEF PURSUANT to Osage Nation declaratory judgment law TO DETERMINE WHETHER OSAGE NATION LAWS APPLY TO THE OSAGE MINERALS COUNCIL. Our attorney has filed a motion to dismiss.

A response to our motion to dismiss was filed June 26th by the Osage Nation Attorney General. Our response to their response will be filed shortly.

A hearing is set for July 20th in tribal court. (By **Cynthia Boone, OMC Councilwoman**)



Councilwoman Cynthia Boone

### 3rd Osage Minerals Council

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#### RESOLUTION OSAGE MINERALS COUNCIL

##### Resolution No. 3-61

WHEREAS: the Osage Nation of Oklahoma is a sovereign government and federally recognized Indian Tribe existing pursuant to its inherent and retained sovereignty as a federally recognized Indian Nation; and

WHEREAS: the Osage Minerals Council, established pursuant to Article XV of the Osage Nation Constitution, is the exclusive, legal governing body of the Osage Mineral Estate; and

WHEREAS: the Osage Nation Constitution vests the Osage Minerals Council with the power to administer and develop the Osage Mineral Estate in accordance with the Act of June 28, 1906, as amended, previously vested in the Osage Tribal Council; and

WHEREAS: the Osage Minerals Council has the authority to act for, to protect the interests of, and to bind Headright Holders with respect to matters relating to the Osage Mineral Estate, including the initiation and prosecution of claims related to the Osage Mineral Estate; and

WHEREAS: the Osage Minerals Council has carefully considered the regulations found at 25 C.P.R. part 226 finalized on May 11, 2015 governing the Leasing of Osage Reservation Lands for Oil and Gas Mining, and have determined that they are not in the best interests of the Osage Mineral Estate; and

WHEREAS: the Osage Minerals Council has determined that upon implementation by the Bureau of Indian Affairs, the regulations will have an immediate and long-lasting adverse and deleterious impact on the Osage Mineral Estate; and

WHEREAS: the Osage Minerals Council has determined that it is in the best interests of the Osage Mineral Estate to pursue staying those regulations prior to their implementation by any valid means, including prosecution; and

WHEREAS: the Osage Minerals Council has determined that Fredericks Peebles & Morgan LLP is qualified to represent the Osage Mineral Estate in any action taken against the Department of the Interior related to said regulations; and

NOW, THEREFORE, BE IT RESOLVED, the Osage Minerals Council hereby approves the initiation of legal action for the purposes of staying implementation of 25 C.P.R. part 226, finalized on May 11, 2015.

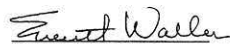
BE IT FURTHER RESOLVED: the Osage Minerals Council hereby authorizes Fredericks Peebles & Morgan LLP to initiate legal action for the purposes of staying implementation of 25 C.P.R. part 226, finalized on May 11, 2015.

BE IT FURTHER RESOLVED: the Chairperson of the Osage Minerals Council is hereby authorized to sign and take any further action necessary to implement the purpose and intent of this Resolution.

#### CERTIFICATION

I, the undersigned, as Chairman of the Osage Minerals Council of the Osage Nation, Oklahoma, do hereby certify that the Osage Minerals Council is composed of eight members, of whom eight members, constituting a quorum, were present at a meeting thereof, duly and regularly called noticed, convened and held this 20<sup>th</sup> day of May, 2015, and the foregoing Resolution 3-61 was adopted by the affirmative vote of 6 for; 2 opposed; Andrew Yates and Galen Crum 0 absent.

Dated: 5.21.15

  
Chairman, Everett Waller  
Osage Minerals Council

Attest:

  
Secretary